

REMARKS

Reconsideration of the subject application as amended herein is respectfully requested for the reasons discussed below.

I. DRAWINGS

Based on the Office Action, Applicant understands that the Examiner has relied upon the drawings of the priority document in connection with this Office Action for the purpose of expediting prosecution. Applicant herewith submits a second set of drawings for this application which are the same as those submitted previously submitted. No substantive changes have been made (or are intended to have been made) to the drawings of the priority document and thus, Applicant submits that no new matter has been added.

II. CLAIM REJECTIONS 35 U.S.C. § 102

The Examiner has rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by W.O. Pat. Document No. 01/75842 ("Netto"). In particular, the Examiner asserts that Netto teaches a thin body, a panel, a tubular passage, a head and a weakened portion as claimed in claim 1.

An invention is anticipated under §102 if the same device, including all the claim limitations, is shown in a single prior art reference. *Manual of Patent Examining Procedure, § 2131 – Anticipation, Application of; Richardson v. Suzuki Motion Co. Ltd.* 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989). Every element of the claimed invention must be literally present, arranged as in the claim. *Perkin-Elmer Corp. v. Coputervision Corp.*, 732 F.2d 888, 894, 221 USPQ 669,

973 (Fed. Cir. 1984) *cert. denied*, 469 U.S. 857 [225 USPQ 792] (1984); *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760, 771-772, 218 USPQ 781, 789 (Fed Cir. 1983) *cert. denied*, 465 U.S. 1026 [224 USPQ 250] (1984). The identical invention from the prior art must be shown in as complete detail as is contained in the patent claim. *Manual of Patent Examining Procedure*, § 2131 – *Anticipation, Application of*; *Jamesbury Corp. v. Litton Industrial Products, Inc.*, 756 F.2d 1556, 1560, 225 USPQ 253, 256 (Fed. Cir. 1985); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983). For the reasons discussed below, Applicant requests that the Examiner reconsider the rejection of the claims, as amended.

Applicant respectfully submits that Netto neither teaches nor suggests the limitations of claim 1, as amended, and claim 7. In particular, Netto does not disclose that the “tunnel 2” (which the Examiner analogizes to the tubular passage of Applicant’s claim 1) is “elongated” as required by amended claim 1 and claim 7. Based on the structure of Netto’s security seal, an elongated tunnel is not required for the invention since a number of spaced “sealing formations 11” (i.e., serrated edges) successively engage an “internal tooth 2b” as the seal is tightened. Once each sealing formation 11 passes the single tooth 2b located in the narrow, non-elongated tunnel 2, it is locked into position. On the other hand, Applicant’s improved seal may be sealed at any desired location along the thin body, and at any location in the elongated tubular passage, since it the seal does not depend on engagement of an serrated surface along the body. This provides

for a better fit and thus a more versatile seal, as compared to Netto and other seals that are fastened at fixed points where serrated edges are located.

In addition, Applicant submits that claim 1, as amended, is further distinguished from the cited prior art since Applicant's elongated tubular passage is "located at an interior area of said head." Netto's "tunnel 2" is located at the top edge of the "first region 17" (which the Examiner analogizes to the "head" of Applicant's claim 1). With the tubular passage located at an interior area of said head (rather than at the edge), it is less likely for Applicant's seal to rupture at an undesirable location (i.e., at the location of the tubular passage) in addition to the rupture line, as intended. Moreover, since the head of Applicant's invention functions as a stopper even after the seal is broken at the rupture line, it is highly desirable that the tubular passage remain intact and not easily broken as is in Netto, where the tunnel is not elongated and located at the top edge of the head.

Applicant submits that the other amendments to claim 1 (such as removal of the reference numerals, changing "element" to "body" etc.) are made merely for purposes of readability and to provide proper antecedent bases for the recited limitations, and not for the substantive purpose of distinguishing the claim over the cited prior art.

II. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

The Examiner has rejected claims 2-5 pursuant to 35 U.S.C. §103. In particular, claims 2-5 were rejected as being unpatentable over Netto (referenced above) in view of France Pat. No. 2,632,431 ("Malachowski"). In the event that

the Examiner is persuaded by Applicant's amendment and/or arguments in connection with the claim 1 above, the arguments set forth below with respect to claims 2-5 need not be considered, since all of these claims depend directly or indirectly on claim 1.

It is well established that the Examiner bears the initial burden of demonstrating a *prima facie* case of obviousness under §103. *In re Rinehart*, 531 F.2d 1048, 189 U.S.P.Q. 143 (C.C.P.A. 1976). To this end, the *prima facia* case requires, *inter alia*, some suggestion or motivation to modify or combine the references based upon the prior art or a general knowledge in the field. *Manual of Patent Examining Procedure*, § 2143 *Basic Requirements of Prima Facie Obviousness*; *In re Rouffet*, 149 F.3d 1350, 47 U.S.P.Q.2d 1453 (Fed. Cir. 1998). “The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.” *Manual of Patent Examining Procedure*, § 2143 *Basic Requirements of Prima Facie Obviousness* (citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991)). Statements in the prior art, as well as the inferences that those skilled in the art would be reasonably expected to draw therefrom, may form the basis of such suggestions. *In re Preda*, 401 F.2d 825, 826, 159 U.S.P.Q. 342, 344 (C.C.P.A.1968). However, the mere fact that an apparatus is capable of being modified to perform a claimed feature is insufficient as a basis for a non-obvious rejection without some suggestion to do so. *In re Mills*, 916 F.2d 680, 682, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). “[A]n examiner cannot establish obviousness by located references which describe various

aspects of a patent applicant's invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done." *Ex parte Levengood*, 28 U.S.P.Q.2d 1300, 1301 (Bd. Pat. App. & Int. 1993).

Applicant submits that Netto (or Netto in combination with Malachowski) fails to teach or suggest both an outer tubular body and inner tubular body as claimed in claim 2. Since the Examiner presents Malachowski for the disclosure of a "metal plate 200," it is understood that Netto is alone being utilized as the basis for disclosing both the outer and inner tubular bodies, as claimed in claim 2. To the extent that a "tubular body" is disclosed by Netto, Netto merely discloses a single (outer) tubular body connected to a panel. However, it is clear that Netto fails to disclose or suggest an "inner tubular body mounted coaxially with the metal plate" inside the outer tubular body. Based on the foregoing, Applicant respectfully submits that the Examiner has not met the burden under 35 U.S.C. § 103 in rejecting claim 2.

With respect to claims 3-5 (and new claim 6 which claims that the opening is heat soldered to the inner body)¹, the Examiner has likewise not met the burden of rejecting these claims under 35 U.S.C. § 103. In particular, the Examiner has not, for example, cited references which disclose an outer tubular body having holes of different sizes at opposite ends – one to receive the thin body and the other to receive the metal plate and inner tubular body (as required by claim 3); or references that disclose a thin body with a smooth surface and

¹ This limitation was removed from amended claim 3 and incorporated into new claim 6.

different diameters (as required by claim 5). Accordingly, Applicant respectfully submits that the Examiner has not met the burden under 35 U.S.C. § 103 in rejecting claims 3-5.

Applicant submits that the amendments to claims 2-5 are primarily made merely for purposes of readability and to provide proper antecedent bases for the recited limitations, and not for the substantive purpose of distinguishing the claim over the cited prior art.

New claims 7 and 8 are submitted that recite further distinguishing characteristics. Claim 7 recites a seal with a flat plate with a straight edge and a head with an elongated passage attached to the plate by a frangible portion, with the elongated passage being in parallel with the straight edge. Claim 8 further specifies that the head is tubular (as shown in the drawings). Neither of these features are disclosed by the references of record.

III. CONCLUSION

Based on the foregoing, Applicant's claimed invention as presented in the claims and amendments thereof are distinguished over the cited prior art. Accordingly, Applicant submits that all of the claims, as amended, are in condition for allowance and early and favorable examination is requested.

Payment by EFT of \$60.00 is included herewith to cover the fees prescribed by 37 C.F.R. §1.136, for a Petition for an Extension of Time (one month). The Commissioner is authorized to charge any additional fees which may be required, and/or to credit any overpayment, to Deposit Account No. 07-1730, Attorney Ref. No. 6647/006.

Respectfully submitted,

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